CITIBANK BHD

v.

ALAF LINCAH SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHD HISHAMUDIN YUNUS J
[CIVIL SUIT NO: S3-22-1490-02]
8 OCTOBER 2003
(14 JANUARY 2004)

CIVIL PROCEDURE: *Summary judgment - Application for - Breach of obligation by 1st defendant under loan agreements - Whether plaintiff could enforce 1st defendant's obligation - Whether such loan agreements within ambit of O. 81 r. 1(1)(a) Rules of the High Court 1980*

WORDS & PHRASES: *"… an agreement … for the sale, purchase, … of any property …" - Rules of the High Court 1980, O. 81 r. 1(1)*

This was an application by the plaintiff pursuant to O. 81 r. 1(1) of the Rules of the High Court 1980 ('RHC') for summary judgment against the 1st defendant for specific performance of loan agreements between the plaintiff and the 1st defendant. The 2nd defendant was the vendor of the properties that the 1st defendant intended to purchase. The plaintiff, which had granted the 1st defendant loan facilities, stipulated in the loan agreements that the 1st defendant was to provide the plaintiff, as security for the facilities granted, the deeds of assignment of the properties in favour of the plaintiff. In reliance of the 1st defendant's authorisation, the plaintiff disbursed the whole sum under the facilities in favour of the 2nd defendant. However, in breach of its obligation under the loan agreements, the 1st defendant, despite several reminders, refused to deposit with the plaintiff the deeds of assignment for the purpose of completing and perfecting the security under the loan agreements, resulting in the present suit by the plaintiff.

Held:

[1] The words "… an agreement … for the sale, purchase, … of any property …" in O. 81 r. 1(1)(a) of the RHC clearly refer to a sale and purchase agreement of a property between a vendor of a property and a purchaser of the same. The words cannot be interpreted so as to include any loan agreement between a purchaser of a property and a financial institution for the purpose of financing the purpose of the property. This means that in order to be able to invoke the provision, a plaintiff must show that the writ that he has filed is indorsed with a claim for specific performance of

a sale and purchase agreement of property. Therefore, the plaintiff in the present case could not invoke O. 81 r. 1(1)(a) of the RHC because the plaintiff's writ was not indorsed with a claim for specific performance of an agreement for the sale and purchase of property between the plaintiff and the 1st defendant. The sale and purchase agreements that had taken place were only between the 1st defendant and the 2nd defendant; the plaintiff was merely a provider of financial facilities in respect of the sales and purchases. The plaintiff was merely seeking to enforce the 1st defendant's obligation, under the loan agreements, to deposit with the plaintiff the deeds of assignment executed in favour of the plaintiff, and such loan agreements are outside the ambit of O. 81 r. 1(1)(a) of the RHC. (p 320 c-h)

[Application dismissed.]

Legislation referred to:
Rules of the High Court 1980, O. 81 r. 1(1)(a)

For the plaintiff - SY Chan (JL Quah); M/s Shearn Delamore & Co
For the 1st defendant - Norhaslinda Salleh; M/s Hadi & Co

Reported by Suresh Nathan

JUDGMENT

Mohd Hishamudin Yunus J:

The application (encl. 9) that is now before me is an application by the plaintiff for summary judgment against the 1st defendant for specific performance of loan agreements between the plaintiff bank and the 1st defendant, a purchaser of properties. The sales and purchases of the properties are between the 1st defendant and the 2nd defendant. This application is pursuant to O. 81 r. 1(1)(a) of the Rules of the High Court 1980.

I have dismissed the application with costs.

I will now give my grounds. But, first, I shall state briefly the background that led to the main action (or suit) and the present application.

The 2nd defendant was the owner of 10 units of apartments in a condominium in Kuala Lumpur. By way of 10 sale and purchase agreements, the 2nd defendant sold the 10 units to the 1st defendant. For the purpose of the purchases, the 1st defendant applied to the plaintiff bank for loan facilities. The plaintiff approved the 1st defendant's application for the facilities and, accordingly, the letters of offer were issued by the plaintiff to the latter. The 1st defendant accepted the offers and thereafter 10 facility agreements and security documents were duly executed by the parties. One of the conditions stipulated in the letters of offer and the facility agreements (hereinafter I shall

refer to the letters of offer and the facility agreements collectively as the "loan agreements") is that the 1st defendant was to provide the plaintiff, as security for the facilities granted, the deeds of assignment (in all, ten deeds) of the properties (ie, the 10 units of apartments) in favour of the plaintiff. By a letter dated 25 June 2002, the 1st defendant authorized the plaintiff to disburse the facilities. In reliance on this authorization, the plaintiff disbursed the whole sums under the facilities in favour of the 2nd defendant. However, in breach of its obligation under the loan agreements, the 1st defendant, despite several reminders, refused to deposit with the plaintiff the deeds of assignment for the purpose of completing and perfecting the security under the loan agreements. Hence, the present suit by the plaintiff against the defendants (I have some doubt as to the necessity and the propriety in making the 2nd defendant as a party to this suit as the 2nd defendant is not a party to the loan agreements).

Enclosure 9 is an interlocutory application by the plaintiff for summary judgment containing, *inter alia*, a prayer seeking an order for specific performance of the stipulation of the loan agreements to the effect that the 1st defendant do deliver and deposit with the plaintiff the 10 deeds of assignment within seven days from the date of the order (there is also an alternative prayer involving the 2nd defendant but, in the light of this judgment, I do not think that it is necessary for me to deal with it).

Order 81 r. 1(1)(a) provides as follows:

> 1. **Application by plaintiff for summary judgment.**
>
> (1) In any action begun by writ indorsed with a claim:
>
> (a) for specific performance of **an agreement (whether in writing or not) for the sale, purchase or exchange of any property,** or …
>
> (b) …
>
> (c) …
>
> the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment. (emphasis added.)

In the present case, can the plaintiff avail itself the above provision? With respect, I do not think so. There is no doubt that the plaintiff's claim, as indorsed in the writ, is for specific performance of agreements. However, it is also pertinent to note that the above rule specifies the type of agreement to which the rule applies, and the crucial question is: Can the loan agreements relied upon by the plaintiff in the present case, by its nature, be said to be:

> … an agreement … for the sale, purchase, … of any property …?

In my judgment, whether or not O. 81 r. 1(1)(a) is applicable, therefore, depends on the interpretation of the words:

> … an agreement … for the sale, purchase, … of any property …

appearing in para. (a) of sub-r. (1); that is to say, whether these words refer solely to a sale and purchase agreement of property between a vendor of a property and a purchaser of the same; or whether the words should be given a wider interpretation so as to also include any loan agreement for the purpose of the purchase of the property in question between a financial institution (say, a bank) and the purchaser of the property; such as, for example, the loan agreements between the plaintiff bank and the 1st defendant in the present case.

In my judgment, the words:

> … an agreement … for the sale, purchase, … of property …

clearly refer solely to a sale and purchase agreement of property between a vendor of a property and a purchaser of the same. In other words, the words cannot be interpreted so as to also include any loan agreement between a purchaser of a property and a financial institution for the purpose of financing the purchase of the property. This means that, in order to be able to invoke the provision, a plaintiff must show that the writ that he has filed is indorsed with a claim for specific performance of a sale and purchase agreement of property.

If this is the true interpretation of the words – and I so hold it is – then, the plaintiff in the present case cannot invoke the provision of O. 81 r. 1(1)(a). This is because the plaintiff's writ is not endorsed with a claim for specific performance of an agreement for the sale and purchase of property between the plaintiff and the 1st defendant. In fact, no sale and purchase agreement ever took place between the plaintiff and the 1st defendant. The sale and purchase agreements that had taken place were only between the 1st defendant (as purchaser of the 10 units) and the 2nd defendant (as vendor of the 10 units). The plaintiff is merely a provider of financial facilities in respect of the sales and purchases. The plaintiff's immediate concern is with the obligations of the 1st defendant under the loan agreements. The plaintiff is not concerned (at least, not directly) with the respective rights and obligations of the parties under the sale and purchase agreements that subsist between the 1st defendant and the 2nd defendant. The plaintiff, in the present action, is merely seeking to enforce the 1st defendant's obligation under the loan agreements – the obligation to deposit with the plaintiff the deeds of assignment executed in favour of the plaintiff. And such loan agreements are, as I have opined, outside the ambit of O. 81 r. 1(1)(a).